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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,926	08/12/2004	Irina A. Smith	001-400	4925

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EXAMINER
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GILBERT, SAMUEL G

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/710,926	<b>Applicant(s)</b> SMITH, IRINA A.	
	<b>Examiner</b> Samuel G. Gilbert	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-115 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/12/2004</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 8/12/2004 has been considered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 – in line 2, “contained with said tear” is unclear.

Claims 11 and 12 – the claims are written as dependant claims depending from themselves, therefore the scope of the claims are indefinite.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the raised platform and vibrating bullet must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

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prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***For prosecution on the merits claims 11 and 12 will not be considered because the scope is too indefinite to determine what the applicant has claimed. Further, none of the claims are being considered to have invoked 35 USC 112 6th paragraph.***

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 8, 9, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adam & Eve, and the two vibrators from "Natural Contours" one on page 2 and one on page 47 in view of Chi (Des. 359,563) or Mochida (Des. 339,198).

The devices from Natural Contours teach a curved tear shaped vibrator with flattened surface but does not teach a raised platform covered with pimples. Both Chi and Mochida teach hand held vibrators having raised platforms covered with pimples. It is old and well known in the arts to use textured surfaces, such as pimples to enhance the stimulating effects of vibrating devices and the raised surfaces shown by Chi and Mochida allow the positioning of the textured surfaces to maximize the stimulating effects of the vibrating devices. It would have been obvious to one of ordinary skill in the arts at the time the invention was made to include a textured surface (such as pimples) on a raised platform on the contacting surfaces of the Natural Contours devices to allow positioning to maximize the stimulating effects of the vibrators and the enhanced stimulating surface.

Claim 2 – the device on page 47 vibrates on both ends, therefore the examiner believes it is inherent that vibrating means are contained in the tear.

Claim 5 – the devices of Natural Contours inherently include a power source.

Claim 8 – switches are shown on both Natural Contour devices.

Claim 9 – the device inherently includes an on/off position and as described the vibrators have three speeds.

Claim 17 – the curve of the Natural Contours vibrators match the female body, described on page 2

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Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Natural Contours" one on page 2 and one on page 47 and Chi (Des. 359,563) or Mochida (Des. 339,198) as applied to claims 1 and 2 above, and further in view of Manska(2002/0188234).

The combination of "Natural Contours" one on page 2 and one on page 47 and Chi (Des. 359,563) or Mochida (Des. 339,198) teaches a device as claimed but does not set forth any particular vibrator. Vibrating bullets are old and well known in the arts as shown by Manska, element -22-. In the absence of showing any criticality in the exact type of vibrator used the selection of any known vibrator would be an ordinary design expedient to one of ordinary skill in the arts. In the instant case, it would have been obvious to use the vibrating bullet -22- as a substitution of functionally equivalent elements for the vibrators of the Natural contours devices in the absence of showing any criticality in the type of vibrator used.

Claim 4 – the bullet vibrator of Manska transfers vibration to the device and the pimples would be on the device therefore the device functions as claimed.

Claims 6, 7, 10, 13, 14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Natural Contours" one on page 2 and one on page 47 and Chi (Des. 359,563) or Mochida (Des. 339,198) as applied to claims 1, 2 and 5 above, and further in view of Garland (6,749,557).

The combination of "Natural Contours" one on page 2 and one on page 47 and Chi (Des. 359,563) or Mochida (Des. 339,198) teach a device as claimed but does not

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include a plurality of batteries. In the absence of showing any criticality in the exact power source used the selection of any known power source would be an obvious design expedient to one of ordinary skill in the art. Garland teaches a plurality of batteries to power the vibrator. It would have been obvious to one of ordinary skill in the medical arts to use a plurality of batteries to power the vibrator of Natural contours to allow the device to be wireless, does not require a power cord.

Claims 7, 19 and 20 - Garland teaches placing the batteries in the handle, applicant's attention is invited to figure 3. In the absence of showing any criticality of the positioning of the batteries the selection of any known positioning would have been an obvious design expedient to one of ordinary skill in the arts.

Claim 10 – the use of batteries in the handle inherently requires a battery compartment in the handle.

Claim 13 – the Natural Contours vibrators appear to be made from smooth plastic however no specific material is set forth. Garland sets forth using a plastic material, column 4 line 48. In the absence of showing any criticality in the material used for the vibrator the selection of any particular material would be an ordinary design expedient to one of ordinary skill in the arts. Therefore the selection of plastic would have been obvious to one of ordinary skill in the arts.

Claim 14 - Garland further teaches the use of two different materials plastic and a soft rubber, column 4 lines 49-51 based only on preference of the user. It would have been obvious to form the vibrating end of the Natural Contours vibrators with rubber or

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silicone rubber as taught by Garland column 4 lines 49-51 to provide the user with a plurality of choices to maximize the users pleasure.

Claim 18 the use of wire connectors are inherent in the vibrators of Natural Contours.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 6, 7, 8, 9, 10, 14, 15, and 18-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Leonard et al (5,470,303).

The examiner is taking portion –2- to be tear shaped and includes pimples, column 4 lines 56 and 57, element –110- is a raised platform and element –107- is a plastic shape holder.

***Allowable Subject Matter***

Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



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**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6,656,139 teaches a related vibrator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Samuel G. Gilbert  
Primary Examiner  
Art Unit 3735

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